where unarmed natives of the neighbouring tribes, whose duty or pleasure took them into the Masai Reserve, have been wantonly murdered, and the catalogue also includes numerous instances of thefts of stock from neighbouring farms and territories. An investigation of the record of each of these cases will show that in a small number only of incidents has the perpetrator of the crime been brought to book. The probability that the commission of a stock-theft or a murder can be performed by a Masai of the " Muran " class without the knowledge of his associates is so slight that it has been found necessary to accept the principle that the responsibility for the surrender of criminals traced to any particular area rests on all the members of the section inhabiting that area. This system is in vogue throughout all the native districts of the Protectorate and is generally employed with a fair measure of success, but a similar success does not attend its application to the Masai Reserve, and this reserve is, in fact, the area to which the great majority of impositions of fines under the Collective Punishments Ordinance, 1910, have been applied, the refusal of the Masai to assist in tracing the criminal rendering it necessary to utilize the provisions of the Ordinance to effect the punishment of the whole section involved. The bleeding of a cow by the murder of an unprotected wanderer or the theft of stock guarded perhaps by children is a survival of the traditions which necessitated the " Muran " to prove their manhood during the period in the standing army or the " L-Ayok " to prove their worth before circumcision. Such acts may not be regarded at the present day as valiant, but it seems that the criminal's associates have not yet come to look on them as reprehensible, and the Masai, on account of their wealth, do not possess the same dread of a collective fine as is felt by certain of the poorer tribes. Under any circumstances, the " Muran " offer no assistance in the tracking down of the criminal and the elders, though professing detective zeal, are powerless to intervene. The attitude of the section involved in such cases is one of surprise and listlessness—they never know anything—and the collective fine which may ensue has not hitherto had the result of discouraging the adoption of such an attitude.

Divisions.

It will generally be found that fines of this nature have been levied on Companies or " Sirits " of different class, and, sometimes, on all the members of a class or division. There is no case on record in which a collective punishment has been imposed on the Masai tribe as a whole. It is therefore necessary to refer shortly to the divisions into which the Masai, who are all of one tribe, are divided by their traditions and customs, and to note also the divisions into which they are divided in practice for the purposes of the administration of the reserve. A description of the traditional divisions of the Masai people is given in Mr. Hollis' Book on the Masai, pp. 280 and 281, but the names which are now in use to denote the divisions of the tribe within the reserve do not exclusively follow either the genealogical or the geographical divisions which are there set out. The Officer-in-Charge of the Masai reserve is endeavouring to confine the members of each division to certain areas set apart for them as locations, and this step will have the effect of reconciling the name given to a division with the locality in which it is found, thus tending to perpetuate a convenient form of nomenclature.

Whatever may have been the original system on which these divisions were formed, it appears that there is a really marked class feeling between them, and several incidents are recorded which disclose the presence of mutual distrust and strained relationship between the divisions, while intermarriage by one division with another is keenly resented. These divisions form the basis of the tribal organization of the Masai as it exists to-day and each division has its own Council of Elders. In the recently constituted " Masai Council," one elder, or more, has been chosen to represent each division and the Council as formed has been accepted as representative of the whole tribe. It will thus be seen that the division system presents an admirable method of dealing with the tribe, closely allied to the location system employed in other Native Reserves in the Protectorate, and has enabled unrest or crime to be so localized as to limit the liability for offences committed to certain definite sections of the Masai. Nevertheless, there is not sufficient difference in the behaviour or customs of the members of each

Masai Council.

9:Foxbrooke G-5 (1936-1948) 1948 FL.12 Masai FL.12 Kisonko

When blood-money is paid, it is less wanted like

payment is between clansmen. The logical extension of this principle is that when cattle are due from one member of the clan they may be taken from any of his clansmen. This is in fact the rule for payment of compensation amongst the Masai, though the offender and his near relatives naturally pay more. In the one case of blood money in which details were obtained, members of sub-clans other than that of the murderer contributed, and it is, therefore, safe to calculate that clan responsibility and cohesion applies to the whole clan in greater degree than it does to the sub-clans.

B. Family matters — the boma system — the 'gate' — polygamy — marriage statistics — number of cattle to each gate — relations in law — travelling — adoption — commonds.

Briefly, the Masai live in groups of families, usually three, four or five together, in a village comprising a ring of huts, built immediately inside a circular fence, which thus forms an enclosure for the cattle. Such villages are usually built some two or three miles, frequently more, from the water which the cattle use, so that it is unusual to find more than two or three bomas in close proximity. Frequently a boma is a mile or more from its nearest neighbour. In the village each family possesses a separate gate, *enyolowa*, round which its members are grouped.

It is difficult to define a typical family or 'gate' unit. The ideal of a Masai elder is to possess half a dozen wives with many children, ranged on either side of his gate. As he marries *his* places the first on the right of the gate, and the second on the left; when a third wife comes in she builds her hut immediately to the right of the gate, and the fourth immediately to the left, the earlier wives moving round accordingly. Each wife on arrival is given a number of cattle, which are hers to hold in trust for her children. She is also given, for tending, some of the unallocated cattle which the elder holds in reserve for future marriages; such cattle are termed *enyoike e loo*. Those living to the right and the left of the gate form two distinct groups, *inkolorian*, and for the purpose of inheritance, should a wife on the left die without male issue, her cattle will be inherited by the senior male on the left of the gate; they may in no circumstances be taken by an heir on the right so long as there is a son on the left to inherit.

When the sons are circumcised, they nominally take over the guardianship of their mother, and of the cattle allocated to her. In the old days they would move off with her to the *manyatta*, warriors' village, but this is less frequent now. As they approach elderhood, however, in polygamous families the sons at times claim their patrimony and move off with their mothers, to form a separate gate in some other boma. More frequently they show little desire for this responsibility, and spend the greater part of their period of warriorhood wandering round the countryside, or living in meat-camps in the bush (*el puli*). Once they become elders it is exceptional for a son to continue to live with his father, except where the latter has reached senility.

This is the theory of the gate system, but in practice it varies very considerably from the ideal. Polygamy (see below) is limited by the

13:Huntingford E-4 (no date) 1953 FL:12 Masai FL:12

from each side suckled each other's babies. Peace was then kept till it suited one side to break it. With Dorobo whom the Masai sometimes made short blood-brotherhood with never to declare, for they have no blood-brotherhood of their own. An ox among the Dorobo, given in a sign of peace, and a handful of grass constitutes a plea for mercy recognized by the Masai and those whom they count as more or less friendly. The ill-regard of "outsiders," such as other pastoralists, but not Dorobo, the Masai's agricultural tribes.

Legal Sanctions

The Masai legal system seems to be less organized than that of the Nandi, and to depend even more on the force of public opinion than on the position and status of the council leader. It appears that only in cases of homicide is there anything like a regular procedure. The Masai distinguish between intentional and accidental homicide, the difference being that for the latter there is no blood feud and the amount of compensation is smaller. The number of blood-cattle paid as compensation, *ol-dokha en-i-ndogi*, "murder cattle," varies, but may be as high as two to three hundred for a man; Hollis says 50 for a boy, and Merker 10 head of cattle and 10 goats and sheep for a woman. Tadicombe gives the figures as 40 for a circumcised man, and 20 for a woman or uncircumcised man. The Il-Arusa are recognized as a group which pays and receives blood-cattle. The murder may be avenged by the dead person's brothers who may try to kill the murderer, and if compensation is not paid, the resulting feud may involve all agnatic kinsmen on both sides. It is not clear whether killing of the murderer makes the avengers also liable to compensation. If the victim belongs to the same sub-clan as the murderer, no compensation is payable. If they belong to different sub-clans of the same clan, or to different clans, all members of the murderer's sub-clan contribute, and the cattle are divided among the members of the victim's sub-clan after the senior brother has received half the stock. When a settlement has been made, peace is made between the families concerned by an exchange of garments. Maguire gives details of three methods of dealing with cases of murder. (1) The relatives of the victim take all the murderer's cattle; they hold a council and, after giving a few cattle to certain elders and old women, the left-overs, less t-shirts, and some may carrying are returned to the owner; the rest they divide among themselves. (2) If action is not taken as over, the relatives of the murdered send a stick to the relatives of the victim, the acceptance of which implies an agreement to meet and settle the matter, and compensation is arranged, the figure named being 40 head of cattle, with nine more added to symbolize the human body (reckoned by the number of its orifices). (3) Sometimes the relatives of the victim do not take action for two years or more; they then visit the murderer's kraal by night and demand the number they want. For killing a smith, *el-kunnut*, no compensation was payable, nor was there a blood feud. If a smith killed a Masai, several smiths are said to have been killed in revenge. Theft (except of cattle) is apparently considered of little account: "If a Masai steals milk or meat or other small things, he is not fined. Grown-up people rarely steal," says Hollis. For cattle thefts, the thieves when caught were fined, seven head from each man concerned.

The general principle that a man is entitled to compensation for a wrong suffered is recognized by all Masai, and this recognition is extended to "foreigners like Dorobo, provided the people concerned are well known to each other. On being accused, a man may submit to an oath, *el-mumai*. In some cases a diviner of the type called *el-gumbi* by Merker is employed to find a guilty person. The whole subject of Masai legal institutions needs detailed investigation.

Modern Administration

The Masai political structure has proved even more difficult of adaptation than that of the Nandi, since it lacked the clear-cut patrilineal division of the latter. Up to 1918 the chief known to Europe was accepted by the Administration as a paramount

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The principal activity of the ol ɔ̀ŋɔ̀nì consists in keeping the people of his district together and protecting them from splitting up, which could be more or less disastrous for the Maasi. Occasion for this is furnished by both the constant petty jealousies and friction between the warriors of the various areas, who, for example, not infrequently plan two war expeditions at the same time, instead of concentrating on one, and the short-sighted selfishness of many old men, who are inclined, in the selection of new pasturing places, to think only of the quality of the pasture, instead of also considering whether the warriors are in a position to protect the desired place from hostile attacks. An enemy's success affects not only the one who loses all his property in connection with it, but is a disgrace for the whole people. In such cases the ol ɔ̀ŋɔ̀nì asserts his authority. To one who does not obey him, the authority of the ol ɔ̀ŋɔ̀nì is, as a rule, made clear by the others by means of a beating. Besides this activity, the ol ɔ̀ŋɔ̀nì, if necessary, acts as an intermediary between the people of his district and the ol oiboni, and sometimes his decision is requested in legal disputes, but since in this case he is guided very little by legal principles, but rather by political shrewdness, one cannot actually designate him as a judicial presence. The conjecture that the ol ɔ̀ŋɔ̀nì might have something to say in matters pertaining to the cult or might make magic amulets is obvious, but does not prove to be true.

We have seen above that every two age classes form an association. If the members of this association have all been married a long time, the ol oiboni binds them even closer in that he bestows upon the two age classes, each of which -- which is to be said beforehand -- has its own name, a common name. This takes place at the ol ŋolòlò festival. For this all the men of the association gather near the ol oiboni and build a large kraal in the vicinity of his village. Everyone brings honey for beermaking or a head of cattle for the feast. The latter is then killed by suffocation, as at the eŋ gòlòlò festival. The festival consists of the contemplation of these things, whose climax is formed by the declaration of the ol oiboni that those assembled henceforth belong to one association (oi ɔ̀lɔ̀l), which only now actually exists and are to bear a common association-name.

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687 [626] 683 There is no special punishment for cowardice in war. The warriors, however, mock the coward in front of the girls and make him ridiculous in their eyes. One who makes anyone ill through sorcery pays a head of cattle to the one bewitched. If the latter dies, the sorcerer must pay the fine levied for murder and is himself driven away.

• 681 The death penalty is carried out in that a band of armed men attack the defenseless sinner and kill him with spears. For a war /217/ traitor the execution is carried out by warriors, for an arsonist, by those injured by him. Fines are usually paid in installments. In general their amount is not fixed for the individual offenses. In the one area this, in the other that is regarded as the norm. Diminished ability to pay because of precious livestock sicknesses or unsuccessful wars naturally lowers the fine. Moreover, if in the district the fellow members of the lineage or tribe of the perpetrator have a preponderance in numbers or power over those of the injured one, the fines are considerably smaller than in the opposite case: then murder is often punished as negligent homicide, or many a time even left entirely unpunished, just like other crimes or misdemeanors. [672] Irresponsibility is regarded as mitigating in some districts, in others not. An attempt is not punished. Self-defense is not mitigating.

[714] [701] [684] [685] A degrading punishment exists only for the warriors and consists of cutting off the guilty man's braid-coiffure, as is well known, one of the insignia of his standing. This punishment is said to be inflicted most frequently for rape committed on a married woman, less often also as additional punishment for theft. Innocent accused persons

734 672 are remunerated with a goat or a sheep. The mentally ill occupy an exceptional position in the legal world only insofar as they are unable to pay fines. In most cases their people are then liable. The latter therefore keep in fetters the sick person who is inclined

[955] toward misdemeanors or crimes. Frequently, too, if an ol gristiki does not succeed in curing him through magic remedies, he is tied to a tree at some distance from the kraal, to be devoured by predatory animals.

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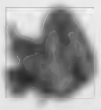
• 681 Unknown in penal law are an aggravated death penalty, for example, death by fire, the principle of an eye for an eye, the view that the perpetrator must pay with the body part with which he has sinned, as well as symbolism, imprisonment, enslavement, a public monetary fine besides the composition, public monetary fines in general, a right of pardon.

683 579 There still remains to be pointed out one penal decree, which, however, exists only for warriors. That the calling and way of life of the warriors, who are impressed primarily by brute strength and force, are not suitable for preventing rowdiness is obvious and is shown by the frequent, more or less rough brawls among them. Insofar as they seem useful for promoting personal courage, they are not punished; for those connected with bodily injury what was said above applies. For the brawls a stick or a club is used as a weapon and the shield for display. In order to force the opponent to leave himself open, one directs a blow on the left lower arm holding the shield, and, to be sure, not infrequently so violently that it is shattered. Now, if a warrior has already inflicted broken bones on the opponent several times, especially in the manner just described, all the warriors, under the leadership of their oi <u>ilgwenani</u>, gather together and announce to him that he will be outlawed if he once more /218/ engages in a brawl; if the one warned violates this prohibition, every warrior of the kraal is justified in killing him.

692 561 [556] [628] The legal proceedings are the same in civil and penal cases; in both there is only one court for the people of a district. For the warriors this is the speaker (oi <u>ilgwenani</u>); for the older married men an older, respected, i.e., wealthy, man chosen each time by the persons concerned to settle the particular case presented. In controversial matters between warriors of different kraals or, which is usually the same thing, of different areas, the speakers concerned jointly confer and decide, either alone or, if they do not reach a definite decision, with the advice of an oi <u>asmoni</u>, whose voice is then decisive. In disputes among married men of different areas a mixed council of elders decides. The oi <u>olbost</u> may be regarded as a court of review, who, however, is called upon only in those 692 cases which concern the commonweal. There are civil proceedings



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Women are also entitled to make a complaint. Evidence presented by witnesses is valid only to the extent that the persons assembled for the proceedings wish to be convinced by it.

683 [692]

The crime of sorcery is only rarely dealt with in a judicial assembly. For the most part the one bewitched, after he has learned from an ol gojitiki the name of the bewitcher, prefers to induce the latter, through gifts, to bewitch him healthy again. Thereupon the two conclude friendship /221/ or, however -- and this not infrequently happens -- the bewitched one now kills his opponent, and, to be sure, without inviting blood revenge upon himself because of it.

• 681 648 [575] 781

There are no secret societies for the purpose of legal actualization or for other purposes. Ordeals or the belief that the dead person will reveal the murderer in a dream are unknown. The Masai do not live with other peoples in such a relationship that the latter could demand or request expiation for murder or some other crime or misdemeanor committed by a Masai on a non-Masai. In this case, therefore, the deed remains unexpiated, whereas the Masai as a rule practice retaliation if the deed was committed on one of their people. Whether or not the murder committed on an Aná or an ol Kuafi by a Masai is expiated depends in each case on the greater or lesser degree of friendly relations that exist between the communities of the murderer and the one murdered. In most cases expiation does not take place, whereas if the injured one is a Masai, his fellow tribesmen will answer with war.